

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Department of Law Enforcement;  
7 amending s. 790.065, F.S.; requiring the department to  
8 review other records in addition to criminal history  
9 records to evaluate a potential buyer or transferee of a  
10 firearm, including an adjudication of mental defectiveness  
11 or a commitment to a mental institution as criteria that  
12 prohibit a person from purchasing a firearm; providing  
13 definitions; requiring the department to maintain an  
14 automated database of persons who are prohibited from  
15 purchasing a firearm; requiring each clerk of court to  
16 submit certain court records to the department within a  
17 certain period; requiring the department to delete certain  
18 records from the automated database upon the request of an  
19 individual meeting specified conditions; authorizing the  
20 department to disclose collected data to other federal or  
21 state agencies with regard to the sale or transfer of a  
22 firearm; authorizing the department to disclose certain  
23 information to the Department of Agriculture and Consumer

HB 645

2005  
CS

24 Services for determining the eligibility of an applicant  
25 for a concealed weapons or concealed firearms license;  
26 requiring the clerk of court or mental hospital to provide  
27 additional information upon request following an appeal of  
28 an unapproved sale or transfer of a firearm; amending s.  
29 914.25, F.S.; providing for recertification for protective  
30 services for an additional period, with reimbursement for  
31 expenses from the Victim and Witness Protection Review  
32 Committee; providing for unlimited protective services for  
33 a victim or witness without reimbursement; amending s.  
34 937.021, F.S.; providing immunity to the department, other  
35 law enforcement agencies, and media representatives from  
36 civil liability for complying in good faith with a request  
37 to record or report information of an Amber Alert or  
38 Missing Child Alert; providing that a technical or  
39 clerical error or incorrect or incomplete information does  
40 not overcome the presumption of good faith in reporting  
41 information about an Amber Alert or Missing Child Alert;  
42 providing that it is a discretionary decision of the law  
43 enforcement agency or its employees to report, record, or  
44 display Amber Alert or Missing Child Alert information;  
45 amending s. 938.07, F.S.; requiring that a portion of  
46 certain court costs imposed for a conviction of driving or  
47 boating under the influence be deposited into the  
48 department's Operating Trust Fund instead of the Criminal  
49 Justice Standards and Training Trust Fund; amending s.  
50 938.27, F.S.; requiring that investigative costs recovered  
51 on behalf of the department be deposited into the

Page 2 of 43

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0645-01-c1

HB 645

2005  
CS

52 Forfeiture and Investigative Trust Fund of the department;  
53 amending s. 943.052, F.S.; requiring that disposition  
54 reports for dispositions relating to minor offenders are  
55 mandatory after a specified date; amending s. 68.07, F.S.;  
56 requiring a set of fingerprints as part of a name change  
57 petition; amending s. 943.05, F.S.; authorizing the  
58 department to retain fingerprints in certain circumstances  
59 and use retained fingerprints for certain purposes;  
60 providing for an annual fee; amending s. 943.053, F.S.;  
61 requiring the department to make certain information  
62 available to judges; limiting use of information;  
63 authorizing a criminal justice agency to obtain a criminal  
64 history background check of a noncertified agency employee  
65 by submitting fingerprints to the department; requiring  
66 the department to adopt rules setting a fee for conducting  
67 the criminal history background search and establishing  
68 procedures; requiring that the criminal history check be  
69 provided by the department in certain circumstances;  
70 amending s. 943.0585, F.S.; prohibiting a court from  
71 expunging a criminal history record containing certain  
72 sexual offenses or certain offenses that require  
73 registration as a sexual offender; requiring a valid  
74 certificate of eligibility for expunction in a petition to  
75 expunge a criminal history record; specifying the time  
76 during which a certificate of eligibility for expunction  
77 is valid; requiring that a trial may not have occurred in  
78 order for a person to obtain a statement from the state  
79 attorney authorizing the expunction of a criminal record;

Page 3 of 43

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0645-01-c1

HB 645

2005  
CS

80 | authorizing a person who has secured a prior sealing or  
81 | expunction of a criminal history record to seek a  
82 | certificate of eligibility for expunction if the criminal  
83 | history record was previously sealed for a certain number  
84 | of years and is otherwise eligible for expunction;  
85 | providing that a person who is seeking authorization for  
86 | employment within or access to a seaport may not deny or  
87 | fail to acknowledge arrests covered by expunged records;  
88 | providing that the department may acknowledge expunged  
89 | criminal history records under certain circumstances;  
90 | amending s. 943.059, F.S.; enumerating certain sexual  
91 | offenses and offenses that require registration as a  
92 | sexual offender which may not be sealed; requiring a valid  
93 | certificate of eligibility for sealing in a petition to  
94 | seal a criminal history record; specifying the period  
95 | during which a certificate of eligibility for sealing is  
96 | valid; providing that the information contained in a  
97 | sealed criminal record is available to a criminal justice  
98 | agency for the purpose of conducting a criminal history  
99 | background check for approval of a firearms purchase or  
100 | transfer; prohibiting a person from denying arrests  
101 | covered by his or her sealed criminal record when  
102 | attempting to purchase a firearm; providing that a person  
103 | who is seeking authorization for employment within or  
104 | access to a seaport may not deny or fail to acknowledge  
105 | arrests covered by sealed records; providing that the  
106 | department may acknowledge sealed criminal history records  
107 | under certain circumstances; amending s. 943.13, F.S.;

Page 4 of 43

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0645-01-c1

108 | requiring the department to enter fingerprints into a  
 109 | statewide automated fingerprint identification system;  
 110 | requiring the department to search each arrest fingerprint  
 111 | card received against fingerprints retained in the  
 112 | statewide automated fingerprint identification system;  
 113 | providing for refingerprinting by a certain date; amending  
 114 | ss. 943.1715 and 943.1716, F.S.; deleting the minimum  
 115 | number of hours required for basic skills training and  
 116 | continued employment training relating to diverse  
 117 | populations for law enforcement officers; repealing s.  
 118 | 943.2569, F.S., relating to an annual financial audit of  
 119 | criminal justice selection centers; amending s. 943.257,  
 120 | F.S.; authorizing the Criminal Justice Standards and  
 121 | Training Commission and the advisory board of a criminal  
 122 | justice selection center to inspect and copy any documents  
 123 | from a center in order to carry out oversight  
 124 | responsibilities, including documents pertaining to any  
 125 | internal or independent audits; amending s. 943.401, F.S.;  
 126 | requiring the department to investigate all public  
 127 | assistance that is provided by the state; requiring public  
 128 | assistance recipients to consent in writing to an  
 129 | investigation into their employment and financial  
 130 | histories by the Agency for Workforce Innovation;  
 131 | requiring the department to report the results of the  
 132 | investigations to the Agency for Workforce Innovation;  
 133 | authorizing the department to purchase goodwill and  
 134 | promotional materials; limiting the annual amount of such  
 135 | expenditures; prohibiting the unauthorized use of the

HB 645

2005  
CS

136 department's emblems and names; providing a penalty;  
137 providing effective dates.

138

139 Be It Enacted by the Legislature of the State of Florida:

140

141 Section 1. Effective February 1, 2006, paragraph (a) of  
142 subsection (2) of section 790.065, Florida Statutes, is amended  
143 to read:

144 790.065 Sale and delivery of firearms.--

145 (2) Upon receipt of a request for a criminal history  
146 record check, the Department of Law Enforcement shall, during  
147 the licensee's call or by return call, forthwith:

148 (a) Review criminal history records and other records that  
149 have been provided to the department to determine if the  
150 potential buyer or transferee:

151 1. Has been convicted of a felony and is prohibited from  
152 receipt or possession of a firearm pursuant to s. 790.23;

153 2. Has been convicted of a misdemeanor crime of domestic  
154 violence, and therefore is prohibited from purchasing a firearm;  
155 ~~or~~

156 3. Has had adjudication of guilt withheld or imposition of  
157 sentence suspended on any felony or misdemeanor crime of  
158 domestic violence unless 3 years have elapsed since probation or  
159 any other conditions set by the court have been fulfilled or  
160 expunction has occurred; ~~or-~~

161 4. Has been adjudicated mentally defective or has been  
162 committed to a mental institution by a court and as a result is  
163 prohibited by federal law from purchasing a firearm.

HB 645

2005  
CS

164 a. As used in this subparagraph, "adjudicated mentally  
165 defective" means a determination by a court that a person, as a  
166 result of marked subnormal intelligence, or mental illness,  
167 incompetency, condition, or disease, is a danger to himself or  
168 herself or to others or lacks the mental capacity to contract or  
169 manage his or her own affairs. The phrase shall include a  
170 judicial finding of incapacity under s. 744.331(6)(a), an  
171 acquittal by reason of insanity of a person charged with a  
172 criminal offense, and a judicial finding that a criminal  
173 defendant is not competent to stand trial.

174 b. As used in this subparagraph, "committed to a mental  
175 institution" means involuntary commitment, commitment for mental  
176 defectiveness or mental illness, and commitment for substance  
177 abuse. The phrase shall include involuntary inpatient placement  
178 as defined in s. 394.467, involuntary assessment and  
179 stabilization under s. 397.6818, and involuntary substance abuse  
180 treatment under s. 397.6957, but shall not include a person in a  
181 mental institution for observation or discharged from a mental  
182 institution based upon the initial review by the physician or a  
183 voluntary admission to a mental institution.

184 c. In order to check for these conditions, the department  
185 shall compile and maintain an automated database of persons who  
186 are prohibited from purchasing a firearm based on court records  
187 of adjudications of mental defectiveness or commitments to  
188 mental institutions. Clerks of court are required to submit  
189 these records to the department within one month of the  
190 rendition of the adjudication or commitment. Reports may be  
191 submitted in an automated format. The reports must, at a

192 minimum, include the name, along with any known alias or former  
 193 name, the sex, and the date of birth of the subject. The  
 194 department shall delete any mental health record from the  
 195 database upon request of an individual, when 5 years have  
 196 elapsed since the individual's restoration to capacity by court  
 197 order after being adjudicated an incapacitated person under s.  
 198 744.331, or similar laws of any other state; or, in the case of  
 199 an individual who was previously committed to a mental  
 200 institution under chapter 394, or similar laws of any other  
 201 state, when the individual produces a certificate from a  
 202 licensed psychiatrist that he or she has not suffered from  
 203 disability for at least 5 years prior to the date of request for  
 204 removal of the record. Where the department has received a  
 205 subsequent record of an adjudication of mental defectiveness or  
 206 commitment to a mental institution for such individual, the 5-  
 207 year timeframe would be calculated from the most recent  
 208 adjudication of incapacitation or commitment.

209 d. The department is authorized to disclose the collected  
 210 data to agencies of the Federal Government and other states for  
 211 use exclusively in determining the lawfulness of a firearm sale  
 212 or transfer. The department is also authorized to disclose any  
 213 applicable collected data to the Department of Agriculture and  
 214 Consumer Services for determination of eligibility for issuance  
 215 of a concealed weapons or concealed firearms license upon  
 216 receipt of an applicant fingerprint submission forwarded  
 217 pursuant to s. 790.06(6)(a). When a potential buyer or  
 218 transferee appeals a nonapproval based on these records, the  
 219 clerks of court and mental institutions shall, upon request by



HB 645

2005  
CS

220 the department, provide information to help determine whether  
 221 the potential buyer or transferee is the same person as the  
 222 subject of the record. Photographs and any other data that could  
 223 confirm or negate identity must be made available to the  
 224 department for such purposes, notwithstanding any other  
 225 provision of state law to the contrary. Any such information  
 226 which is made confidential or exempt from disclosure by law  
 227 shall retain such confidential or exempt status when transferred  
 228 to the department.

229 Section 2. Subsections (4) and (5) of section 914.25,  
 230 Florida Statutes, are amended to read:

231 914.25 Protective services for certain victims and  
 232 witnesses.--

233 (4)(a) When a victim or witness is certified as provided  
 234 in subsection (3), a law enforcement agency, in consultation  
 235 with the certifying state attorney or the statewide prosecutor,  
 236 may provide appropriate protective services. If a victim or  
 237 witness needs to be temporarily relocated, the statewide  
 238 prosecutor or the state attorney must notify the Department of  
 239 Law Enforcement. The Department of Law Enforcement, in  
 240 consultation with the statewide prosecutor or the state  
 241 attorney, and any other law enforcement agency involved in the  
 242 criminal investigation or prosecution, shall coordinate the  
 243 temporary relocation of the victim or witness.

244 (b) Protective services, including temporary relocation  
 245 services, may initially be provided for up to 1 year or until  
 246 the risk giving rise to the certification has diminished,  
 247 whichever occurs sooner. ~~If deemed necessary,~~ The statewide

HB 645

2005  
CS

248 | prosecutor or the state attorney may, at the end of the  
 249 | certification year, recertify a victim or witness at risk of  
 250 | harm for an additional period of up to 1 year or until the risk  
 251 | giving rise to the certification has diminished, whichever  
 252 | occurs first. A victim or witness at risk of harm may be  
 253 | certified and recertified annually as provided in this section  
 254 | to provide a maximum of 4 years of eligibility for protective  
 255 | services.

256 |         (5) The lead law enforcement agency that provides  
 257 | protective services, as authorized in this section, may seek  
 258 | reimbursement for its reasonable expenses from the Victim and  
 259 | Witness Protection Review Committee, pursuant to ~~the provisions~~  
 260 | of s. 943.031. This section does not prevent any law enforcement  
 261 | agency from providing protective services at the agency's  
 262 | expense beyond the 4-year maximum period established in this  
 263 | section. Any such additional expenditures for protective  
 264 | services are not eligible for the reimbursement provided in this  
 265 | section.

266 |         Section 3. Subsection (3) is added to section 937.021,  
 267 | Florida Statutes, to read:

268 |             937.021 Missing child reports.--

269 |             (3)(a) Upon receiving a request to record, report,  
 270 | transmit, display, or release Amber Alert or Missing Child Alert  
 271 | information from the law enforcement agency having jurisdiction  
 272 | over the missing or endangered child, the Department of Law  
 273 | Enforcement as the state Amber Alert coordinator; any state or  
 274 | local law enforcement agency and the personnel of these  
 275 | agencies; any radio or television network, broadcaster, or other

HB 645

2005  
CS

276 media representative; or any agency, employee, individual, or  
 277 entity is immune from civil liability for damages for complying  
 278 in good faith with the request, and is presumed to have acted in  
 279 good faith in recording, reporting, transmitting, displaying, or  
 280 releasing Amber Alert or Missing Child Alert information  
 281 pertaining to such child.

282 (b) The presumption of good faith is not overcome if a  
 283 technical or clerical error is made by any such agency,  
 284 employee, individual, or entity acting at the request of the  
 285 local law enforcement agency having jurisdiction, or if the  
 286 Amber Alert or Missing Child Alert information is incomplete or  
 287 incorrect because the information received from the local law  
 288 enforcement agency was incomplete or incorrect.

289 (c) This subsection or any other provision of law does not  
 290 create a duty of the agency, employee, individual, or entity to  
 291 record, report, transmit, display, or release the Amber Alert or  
 292 Missing Child Alert information received from the local law  
 293 enforcement agency having jurisdiction. The decision to record,  
 294 report, transmit, display, or release information is  
 295 discretionary with the agency, employee, individual, or entity  
 296 receiving that information from the local law enforcement agency  
 297 having jurisdiction.

298 Section 4. Section 938.07, Florida Statutes, is amended to  
 299 read:

300 938.07 Driving or boating under the  
 301 influence.--Notwithstanding any other provision of s. 316.193 or  
 302 s. 327.35, a court cost of \$135 shall be added to any fine  
 303 imposed pursuant to s. 316.193 or s. 327.35. The clerks shall

HB 645

2005  
CS

304 remit the funds to the Department of Revenue, \$25 of which shall  
 305 be deposited in the Emergency Medical Services Trust Fund, \$50  
 306 shall be deposited in the Operating Criminal Justice Standards  
 307 ~~and Training~~ Trust Fund of the Department of Law Enforcement to  
 308 be used for operational expenses in conducting the statewide  
 309 criminal analysis laboratory system established in s. 943.32,  
 310 and \$60 shall be deposited in the Brain and Spinal Cord Injury  
 311 Rehabilitation Trust Fund created in s. 381.79.

312 Section 5. Subsection (7) of section 938.27, Florida  
 313 Statutes, is amended to read:

314 938.27 Judgment for costs on conviction.--

315 (7) Investigative costs that ~~which~~ are recovered shall be  
 316 returned to the appropriate investigative agency that ~~which~~  
 317 incurred the expense. Such costs ~~shall~~ include actual expenses  
 318 incurred in conducting the investigation and prosecution of the  
 319 criminal case; however, costs may also include the salaries of  
 320 permanent employees. Any investigative costs recovered on behalf  
 321 of a state agency must be remitted to the Department of Revenue  
 322 for deposit in the agency operating trust fund, and a report of  
 323 the payment must be sent to the agency, except that any  
 324 investigative costs recovered on behalf of the Department of Law  
 325 Enforcement shall be deposited in the department's Forfeiture  
 326 and Investigative Support Trust Fund under s. 943.362.

327 Section 6. Subsection (2) of section 943.052, Florida  
 328 Statutes, is amended to read:

329 943.052 Disposition reporting.--The Criminal Justice  
 330 Information Program shall, by rule, establish procedures and a  
 331 format for each criminal justice agency to monitor its records

HB 645

2005  
CS

332 and submit reports, as provided by this section, to the program.  
333 The disposition report shall be developed by the program and  
334 shall include the offender-based transaction system number.

335 (2) Each clerk of the court shall submit the uniform  
336 dispositions to the program or in a manner acceptable to the  
337 program. The report shall be submitted at least once a month  
338 and, when acceptable by the program, may be submitted in an  
339 automated format. The disposition report is mandatory for  
340 dispositions relating to adult offenders only. Beginning July 1,  
341 2008, a disposition report for each disposition relating to a  
342 minor offender is mandatory.

343 Section 7. Subsections (2) and (5) of section 68.07,  
344 Florida Statutes, are amended to read:

345 68.07 Change of name.--

346 (2) The petition shall include a set ~~copy~~ of the  
347 petitioner's fingerprints taken by a law enforcement agency  
348 except where a former name is being restored and be verified and  
349 show:

350 (a) That petitioner is a bona fide resident of and  
351 domiciled in the county where the change of name is sought.

352 (b) If known, the date and place of birth of petitioner,  
353 petitioner's father's name, mother's maiden name, and where  
354 petitioner has resided since birth.

355 (c) If petitioner is married, the name of petitioner's  
356 spouse and if petitioner has children, the names and ages of  
357 each and where they reside.

358 (d) If petitioner's name has previously been changed and  
359 when and where and by what court.

360 (e) Petitioner's occupation and where petitioner is  
 361 employed and has been employed for 5 years next preceding filing  
 362 of the petition. If petitioner owns and operates a business, the  
 363 name and place of it shall be stated and petitioner's connection  
 364 therewith and how long petitioner has been identified with said  
 365 business. If petitioner is in a profession, the profession shall  
 366 be stated, where the petitioner has practiced the profession and  
 367 if a graduate of a school or schools, the name or names thereof,  
 368 time of graduation, and degrees received.

369 (f) Whether the petitioner has been generally known or  
 370 called by any other names and if so, by what names and where.

371 (g) Whether petitioner has ever been adjudicated a  
 372 bankrupt and if so, where and when.

373 (h) Whether petitioner has ever been arrested for or  
 374 charged with, pled guilty or nolo contendere to, or been found  
 375 to have committed a criminal offense, regardless of  
 376 adjudication, and if so, when and where.

377 (i) Whether any money judgment has ever been entered  
 378 against petitioner and if so, the name of the judgment creditor,  
 379 the amount and date thereof, the court by which entered, and  
 380 whether the judgment has been satisfied.

381 (j) That the petition is filed for no ulterior or illegal  
 382 purpose and granting it will not in any manner invade the  
 383 property rights of others, whether partnership, patent, good  
 384 will, privacy, trademark, or otherwise.

385 (k) That the petitioner's civil rights have never been  
 386 suspended, or if the petitioner's civil rights have been  
 387 suspended, that full restoration of civil rights has occurred.

HB 645

2005  
CS

388 (5) The clerk must, upon the filing of the final judgment,  
 389 send a report of the judgment to the Department of Law  
 390 Enforcement on a form to be furnished by that department. The  
 391 Department of Law Enforcement must send a copy of the report to  
 392 the Department of Highway Safety and Motor Vehicles, which may  
 393 be delivered by electronic transmission. The report must contain  
 394 sufficient information to identify the petitioner, including a  
 395 set ~~copy~~ of the petitioner's fingerprints taken by a law  
 396 enforcement agency, the new name of the petitioner, and the file  
 397 number of the judgment. Any information retained by the  
 398 Department of Law Enforcement and the Department of Highway  
 399 Safety and Motor Vehicles may be revised or supplemented by said  
 400 departments to reflect changes made by the final judgment. With  
 401 respect to a person convicted of a felony in another state or of  
 402 a federal offense, the Department of Law Enforcement must send  
 403 the report to the respective state's office of law enforcement  
 404 records or to the office of the Federal Bureau of Investigation.  
 405 The Department of Law Enforcement may forward the report to any  
 406 other law enforcement agency it believes may retain information  
 407 related to the petitioner. Any costs associated with  
 408 fingerprinting must be paid by the petitioner.

409 Section 8. Paragraphs (g) and (h) are added to subsection  
 410 (2) of section 943.05, Florida Statutes, to read:

411 943.05 Criminal Justice Information Program; duties; crime  
 412 reports.--

413 (2) The program shall:

414 (g) As authorized by law, retain fingerprints submitted by  
 415 criminal and noncriminal justice agencies to the department for

HB 645

2005  
CS

416 a criminal history background screening in a manner provided by  
417 rule, and enter the fingerprints in the statewide automated  
418 fingerprint identification system authorized by paragraph (b).  
419 Such fingerprints shall thereafter be available for all purposes  
420 and uses authorized for arrest fingerprint cards entered into  
421 the statewide automated fingerprint identification system  
422 pursuant to s. 943.051.

423 (h) As authorized by law, search all arrest fingerprint  
424 cards received under s. 943.051 against the fingerprints  
425 retained in the statewide automated fingerprint identification  
426 system under paragraph (g). Any arrest record that is identified  
427 with the retained fingerprints of a person subject to background  
428 screening as provided in paragraph (g) shall be reported to the  
429 appropriate agency. Agencies may participate in this search  
430 process by payment of an annual fee to the department and by  
431 informing the department of any change in the affiliation,  
432 employment, or contractual status or place of affiliation,  
433 employment, or contracting of the persons whose fingerprints are  
434 retained under paragraph (g). The department shall adopt a rule  
435 setting the amount of the annual fee to be imposed upon each  
436 participating agency for performing these searches and  
437 establishing the procedures for the retention of fingerprints  
438 and the dissemination of search results. The fee may be borne as  
439 provided by law.

440 Section 9. Subsections (5) through (9) of section 943.053,  
441 Florida Statutes, are renumbered as subsections (6) through  
442 (10), respectively, and new subsections (5), (11), and (12) are  
443 added to said section, to read:

Page 16 of 43

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0645-01-c1



HB 645

2005  
CS

444 943.053 Dissemination of criminal justice information;  
445 fees.--

446 (5) Notwithstanding the provisions of s. 943.0525, and any  
447 user agreements adopted pursuant thereto, and notwithstanding  
448 the confidentiality of sealed records as provided for in s.  
449 943.059, the department shall make online access to Florida  
450 criminal justice information available to each judge in the  
451 state courts system for the purpose of assisting judges in their  
452 case-related decisionmaking responsibilities. Such online access  
453 shall be provided without charge to the state court system.  
454 Sealed records received by the courts under this section remain  
455 confidential and exempt from the provisions of s. 119.07(1). The  
456 information provided pursuant to this section shall not take the  
457 place of any information required to be provided to the courts  
458 by any other agency or entity. Information provided under this  
459 section shall be used only for the official court business for  
460 which it was requested and may not be further disseminated.

461 (11) A criminal justice agency that is authorized under  
462 federal rules or law to conduct a criminal history background  
463 check on an agency employee who is not certified by the Criminal  
464 Justice Standards and Training Commission under s. 943.12 may  
465 submit to the department the fingerprints of the noncertified  
466 employee to obtain state and national criminal history  
467 information. Effective December 15, 2005, the fingerprints  
468 submitted shall be retained and entered in the statewide  
469 automated fingerprint identification system authorized by s.  
470 943.05 and shall be available for all purposes and uses  
471 authorized for arrest fingerprint cards entered in the statewide

HB 645

2005  
CS

472 automated fingerprint identification system pursuant to s.  
 473 943.051. The department shall search all arrest fingerprint  
 474 cards received pursuant to s. 943.051 against the fingerprints  
 475 retained in the statewide automated fingerprint identification  
 476 system pursuant to this section. In addition to all purposes and  
 477 uses authorized for arrest fingerprint cards for which submitted  
 478 fingerprints may be used, any arrest record that is identified  
 479 with the retained employee fingerprints must be reported to the  
 480 submitting employing agency. The department shall adopt rules  
 481 setting the amount of the fee to be imposed upon each submitting  
 482 agency for performing searches and for establishing procedures  
 483 for retaining the fingerprints and disseminating search results  
 484 to a submitting agency.

485 (12) Notwithstanding any other provision of law, when a  
 486 criminal history check or a duty to disclose the absence of a  
 487 criminal history check is mandated by state law, or when a  
 488 privilege or benefit is conferred by state law in return for  
 489 exercising an option of conducting a criminal history check, the  
 490 referenced criminal history check, whether it is an initial or  
 491 renewal check, shall include a Florida criminal history provided  
 492 by the department as set forth in this section. Such Florida  
 493 criminal history information may be provided by a private vendor  
 494 only if that information is directly obtained from the  
 495 department for each request. When a national criminal history  
 496 check is required or authorized by state law, the national  
 497 criminal history check shall be submitted by and through the  
 498 department in the manner established by the department for such  
 499 checks, unless otherwise required by federal law. The fee for

HB 645

2005  
CS

500 criminal history information as established by state law or, in  
 501 the case of national checks, by the Federal Government, shall be  
 502 borne by the person or entity submitting the request, or as  
 503 provided by law. Criminal history information provided by any  
 504 other governmental entity of this state or any private entity  
 505 shall not be substituted for criminal history information  
 506 provided by the department when the criminal history check or a  
 507 duty to disclose the absence of a criminal history check is  
 508 required by statute or is made a condition of a privilege or  
 509 benefit by law.

510 Section 10. Section 943.0585, Florida Statutes, is amended  
 511 to read:

512 943.0585 Court-ordered expunction of criminal history  
 513 records.--The courts of this state have jurisdiction over their  
 514 own procedures, including the maintenance, expunction, and  
 515 correction of judicial records containing criminal history  
 516 information to the extent such procedures are not inconsistent  
 517 with the conditions, responsibilities, and duties established by  
 518 this section. Any court of competent jurisdiction may order a  
 519 criminal justice agency to expunge the criminal history record  
 520 of a minor or an adult who complies with the requirements of  
 521 this section. The court shall not order a criminal justice  
 522 agency to expunge a criminal history record until the person  
 523 seeking to expunge a criminal history record has applied for and  
 524 received a certificate of eligibility for expunction pursuant to  
 525 subsection (2). A criminal history record that relates to a  
 526 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 527 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.

HB 645

2005  
CS

528 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 529 | 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041,  
 530 | or any violation specified as a predicate offense for  
 531 | registration as a sexual predator pursuant to s. 775.21, without  
 532 | regard to whether that offense alone is sufficient to require  
 533 | such registration, or for registration as a sexual offender  
 534 | pursuant to s. 943.0435, may not be expunged, without regard to  
 535 | whether adjudication was withheld, if the defendant was found  
 536 | guilty of or pled guilty or nolo contendere to the offense, or  
 537 | if the defendant, as a minor, was found to have committed, or  
 538 | pled guilty or nolo contendere to committing, the offense as a  
 539 | delinquent act. The court may only order expunction of a  
 540 | criminal history record pertaining to one arrest or one incident  
 541 | of alleged criminal activity, except as provided in this  
 542 | section. The court may, at its sole discretion, order the  
 543 | expunction of a criminal history record pertaining to more than  
 544 | one arrest if the additional arrests directly relate to the  
 545 | original arrest. If the court intends to order the expunction of  
 546 | records pertaining to such additional arrests, such intent must  
 547 | be specified in the order. A criminal justice agency may not  
 548 | expunge any record pertaining to such additional arrests if the  
 549 | order to expunge does not articulate the intention of the court  
 550 | to expunge a record pertaining to more than one arrest. This  
 551 | section does not prevent the court from ordering the expunction  
 552 | of only a portion of a criminal history record pertaining to one  
 553 | arrest or one incident of alleged criminal activity.  
 554 | Notwithstanding any law to the contrary, a criminal justice  
 555 | agency may comply with laws, court orders, and official requests

HB 645

2005  
CS

556 | of other jurisdictions relating to expunction, correction, or  
 557 | confidential handling of criminal history records or information  
 558 | derived therefrom. This section does not confer any right to the  
 559 | expunction of any criminal history record, and any request for  
 560 | expunction of a criminal history record may be denied at the  
 561 | sole discretion of the court.

562 | (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each  
 563 | petition to a court to expunge a criminal history record is  
 564 | complete only when accompanied by:

565 | (a) A valid certificate of eligibility for expunction  
 566 | issued by the department pursuant to subsection (2).

567 | (b) The petitioner's sworn statement attesting that the  
 568 | petitioner:

569 | 1. Has never, prior to the date on which the petition is  
 570 | filed, been adjudicated guilty of a criminal offense or  
 571 | comparable ordinance violation, or been adjudicated delinquent  
 572 | for committing any a felony or a misdemeanor specified in s.  
 573 | 943.051(3)(b).

574 | 2. Has not been adjudicated guilty of, or adjudicated  
 575 | delinquent for committing, any of the acts stemming from the  
 576 | arrest or alleged criminal activity to which the petition  
 577 | pertains.

578 | 3. Has never secured a prior sealing or expunction of a  
 579 | criminal history record under this section, former s. 893.14,  
 580 | former s. 901.33, or former s. 943.058, or from any jurisdiction  
 581 | outside the state.

HB 645

2005  
CS

582 4. Is eligible for such an expunction to the best of his  
583 or her knowledge or belief and does not have any other petition  
584 to expunge or any petition to seal pending before any court.

585  
586 Any person who knowingly provides false information on such  
587 sworn statement to the court commits a felony of the third  
588 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
589 775.084.

590 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to  
591 petitioning the court to expunge a criminal history record, a  
592 person seeking to expunge a criminal history record shall apply  
593 to the department for a certificate of eligibility for  
594 expunction. The department shall, by rule adopted pursuant to  
595 chapter 120, establish procedures pertaining to the application  
596 for and issuance of certificates of eligibility for expunction.  
597 A certificate of eligibility for expunction is valid for 12  
598 months after the date stamped on the certificate when issued by  
599 the department. After that time, the petitioner must reapply to  
600 the department for a new certificate of eligibility. Eligibility  
601 for a renewed certification of eligibility must be based on the  
602 status of the applicant and the law in effect at the time of the  
603 most recent application. The department shall issue a  
604 certificate of eligibility for expunction to a person who is the  
605 subject of a criminal history record if that person:

606 (a) Has obtained, and submitted to the department, a  
607 written, certified statement from the appropriate state attorney  
608 or statewide prosecutor which indicates:

HB 645

2005  
CS

609 1. That an indictment, information, or other charging  
610 document was not filed or issued in the case.

611 2. That an indictment, information, or other charging  
612 document, if filed or issued in the case, was dismissed or nolle  
613 prosequi by the state attorney or statewide prosecutor, or was  
614 dismissed by a court of competent jurisdiction, and that none of  
615 the charges related to the arrest or alleged criminal activity  
616 to which the petition to expunge pertains resulted in a trial,  
617 without regard to whether the outcome of the trial was other  
618 than an adjudication of guilt.

619 3. That the criminal history record does not relate to a  
620 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
621 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
622 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
623 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041,  
624 or any violation specified as a predicate offense for  
625 registration as a sexual predator pursuant to s. 775.21, without  
626 regard to whether that offense alone is sufficient to require  
627 such registration, or for registration as a sexual offender  
628 pursuant to s. 943.0435, where the defendant was found guilty  
629 of, or pled guilty or nolo contendere to any such offense, or  
630 that the defendant, as a minor, was found to have committed, or  
631 pled guilty or nolo contendere to committing, such an offense as  
632 a delinquent act, without regard to whether adjudication was  
633 withheld.

634 (b) Remits a \$75 processing fee to the department for  
635 placement in the Department of Law Enforcement Operating Trust  
636 Fund, unless such fee is waived by the executive director.

HB 645

2005  
CS

637 (c) Has submitted to the department a certified copy of  
638 the disposition of the charge to which the petition to expunge  
639 pertains.

640 (d) Has never, prior to the date on which the application  
641 for a certificate of eligibility is filed, been adjudicated  
642 guilty of a criminal offense or comparable ordinance violation,  
643 or been adjudicated delinquent for committing any a felony or a  
644 misdemeanor specified in s. 943.051(3)(b).

645 (e) Has not been adjudicated guilty of, or adjudicated  
646 delinquent for committing, any of the acts stemming from the  
647 arrest or alleged criminal activity to which the petition to  
648 expunge pertains.

649 (f) Has never secured a prior sealing or expunction of a  
650 criminal history record under this section, former s. 893.14,  
651 former s. 901.33, or former s. 943.058, unless expunction is  
652 sought of a criminal history record previously sealed for 10  
653 years pursuant to paragraph (h) and the record is otherwise  
654 eligible for expunction.

655 (g) Is no longer under court supervision applicable to the  
656 disposition of the arrest or alleged criminal activity to which  
657 the petition to expunge pertains.

658 (h) Has previously obtained a court order sealing the  
659 record under this section, former s. 893.14, former s. 901.33,  
660 or former s. 943.058 for a minimum of 10 years because  
661 adjudication was withheld or because all charges related to the  
662 arrest or alleged criminal activity to which the petition to  
663 expunge pertains were not dismissed prior to trial, without  
664 regard to whether the outcome of the trial was other than an



665 adjudication of guilt. The requirement for the record to have  
 666 previously been sealed for a minimum of 10 years does not apply  
 667 when a plea was not entered or all charges related to the arrest  
 668 or alleged criminal activity to which the petition to expunge  
 669 pertains were dismissed prior to trial. ~~Is not required to wait~~  
 670 ~~a minimum of 10 years prior to being eligible for an expunction~~  
 671 ~~of such records because all charges related to the arrest or~~  
 672 ~~criminal activity to which the petition to expunge pertains were~~  
 673 ~~dismissed prior to trial, adjudication, or the withholding of~~  
 674 ~~adjudication. Otherwise, such criminal history record must be~~  
 675 ~~sealed under this section, former s. 893.14, former s. 901.33,~~  
 676 ~~or former s. 943.058 for at least 10 years before such record is~~  
 677 ~~eligible for expunction.~~

678 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

679 (a) In judicial proceedings under this section, a copy of  
 680 the completed petition to expunge shall be served upon the  
 681 appropriate state attorney or the statewide prosecutor and upon  
 682 the arresting agency; however, it is not necessary to make any  
 683 agency other than the state a party. The appropriate state  
 684 attorney or the statewide prosecutor and the arresting agency  
 685 may respond to the court regarding the completed petition to  
 686 expunge.

687 (b) If relief is granted by the court, the clerk of the  
 688 court shall certify copies of the order to the appropriate state  
 689 attorney or the statewide prosecutor and the arresting agency.  
 690 The arresting agency is responsible for forwarding the order to  
 691 any other agency to which the arresting agency disseminated the  
 692 criminal history record information to which the order pertains.

HB 645

2005  
CS

693 The department shall forward the order to expunge to the Federal  
694 Bureau of Investigation. The clerk of the court shall certify a  
695 copy of the order to any other agency which the records of the  
696 court reflect has received the criminal history record from the  
697 court.

698 (c) For an order to expunge entered by a court prior to  
699 July 1, 1992, the department shall notify the appropriate state  
700 attorney or statewide prosecutor of an order to expunge which is  
701 contrary to law because the person who is the subject of the  
702 record has previously been convicted of a crime or comparable  
703 ordinance violation or has had a prior criminal history record  
704 sealed or expunged. Upon receipt of such notice, the appropriate  
705 state attorney or statewide prosecutor shall take action, within  
706 60 days, to correct the record and petition the court to void  
707 the order to expunge. The department shall seal the record until  
708 such time as the order is voided by the court.

709 (d) On or after July 1, 1992, the department or any other  
710 criminal justice agency is not required to act on an order to  
711 expunge entered by a court when such order does not comply with  
712 the requirements of this section. Upon receipt of such an order,  
713 the department must notify the issuing court, the appropriate  
714 state attorney or statewide prosecutor, the petitioner or the  
715 petitioner's attorney, and the arresting agency of the reason  
716 for noncompliance. The appropriate state attorney or statewide  
717 prosecutor shall take action within 60 days to correct the  
718 record and petition the court to void the order. No cause of  
719 action, including contempt of court, shall arise against any  
720 criminal justice agency for failure to comply with an order to

Page 26 of 43

HB 645

2005  
CS

721 expunge when the petitioner for such order failed to obtain the  
722 certificate of eligibility as required by this section or such  
723 order does not otherwise comply with the requirements of this  
724 section.

725 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
726 criminal history record of a minor or an adult which is ordered  
727 expunged by a court of competent jurisdiction pursuant to this  
728 section must be physically destroyed or obliterated by any  
729 criminal justice agency having custody of such record; except  
730 that any criminal history record in the custody of the  
731 department must be retained in all cases. A criminal history  
732 record ordered expunged that is retained by the department is  
733 confidential and exempt from the provisions of s. 119.07(1) and  
734 s. 24(a), Art. I of the State Constitution and not available to  
735 any person or entity except upon order of a court of competent  
736 jurisdiction. A criminal justice agency may retain a notation  
737 indicating compliance with an order to expunge.

738 (a) The person who is the subject of a criminal history  
739 record that is expunged under this section or under other  
740 provisions of law, including former s. 893.14, former s. 901.33,  
741 and former s. 943.058, may lawfully deny or fail to acknowledge  
742 the arrests covered by the expunged record, except when the  
743 subject of the record:

- 744 1. Is a candidate for employment with a criminal justice  
745 agency;
- 746 2. Is a defendant in a criminal prosecution;
- 747 3. Concurrently or subsequently petitions for relief under  
748 this section or s. 943.059;

HB 645

2005  
CS

- 749           4. Is a candidate for admission to The Florida Bar;
- 750           5. Is seeking to be employed or licensed by or to contract
- 751 with the Department of Children and Family Services or the
- 752 Department of Juvenile Justice or to be employed or used by such
- 753 contractor or licensee in a sensitive position having direct
- 754 contact with children, the developmentally disabled, the aged,
- 755 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
- 756 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
- 757 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
- 758 985.407, or chapter 400; ~~or~~
- 759           6. Is seeking to be employed or licensed by the Department
- 760 of Education, any district school board, any university
- 761 laboratory school, any charter school, any private or parochial
- 762 school, or any local governmental entity that licenses child
- 763 care facilities; or
- 764           7. Is seeking authorization from a Florida seaport
- 765 identified in s. 311.09 for employment within or access to one
- 766 or more of such seaports pursuant to s. 311.12 or s. 311.125.
- 767           (b) Subject to the exceptions in paragraph (a), a person
- 768 who has been granted an expunction under this section, former s.
- 769 893.14, former s. 901.33, or former s. 943.058 may not be held
- 770 under any provision of law of this state to commit perjury or to
- 771 be otherwise liable for giving a false statement by reason of
- 772 such person's failure to recite or acknowledge an expunged
- 773 criminal history record.
- 774           (c) Information relating to the existence of an expunged
- 775 criminal history record which is provided in accordance with
- 776 paragraph (a) is confidential and exempt from the provisions of

HB 645

2005  
CS

777 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 778 except that the department shall disclose the existence of a  
 779 criminal history record ordered expunged to the entities set  
 780 forth in subparagraphs (a)1., 4., 5., ~~and 6., and 7.~~ for their  
 781 respective licensing, access authorization, and employment  
 782 purposes, and to criminal justice agencies for their respective  
 783 criminal justice purposes. It is unlawful for any employee of an  
 784 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
 785 subparagraph (a)5., ~~or~~ subparagraph (a)6., or subparagraph(a)7.  
 786 to disclose information relating to the existence of an expunged  
 787 criminal history record of a person seeking employment, access  
 788 authorization, or licensure with such entity or contractor,  
 789 except to the person to whom the criminal history record relates  
 790 or to persons having direct responsibility for employment,  
 791 access authorization, or licensure decisions. Any person who  
 792 violates this paragraph commits a misdemeanor of the first  
 793 degree, punishable as provided in s. 775.082 or s. 775.083.

794 (5) STATUTORY REFERENCES.--Any reference to any other  
 795 chapter, section, or subdivision of the Florida Statutes in this  
 796 section constitutes a general reference under the doctrine of  
 797 incorporation by reference.

798 Section 11. Section 943.059, Florida Statutes, is amended  
 799 to read:

800 943.059 Court-ordered sealing of criminal history  
 801 records.--The courts of this state shall continue to have  
 802 jurisdiction over their own procedures, including the  
 803 maintenance, sealing, and correction of judicial records  
 804 containing criminal history information to the extent such

HB 645

2005  
CS

805 | procedures are not inconsistent with the conditions,  
 806 | responsibilities, and duties established by this section. Any  
 807 | court of competent jurisdiction may order a criminal justice  
 808 | agency to seal the criminal history record of a minor or an  
 809 | adult who complies with the requirements of this section. The  
 810 | court shall not order a criminal justice agency to seal a  
 811 | criminal history record until the person seeking to seal a  
 812 | criminal history record has applied for and received a  
 813 | certificate of eligibility for sealing pursuant to subsection  
 814 | (2). A criminal history record that relates to a violation of s.  
 815 | 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
 816 | 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
 817 | 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
 818 | 916.1075, ~~or~~ a violation enumerated in s. 907.041, or any  
 819 | violation specified as a predicate offense for registration as a  
 820 | sexual predator pursuant to s. 775.21, without regard to whether  
 821 | that offense alone is sufficient to require such registration,  
 822 | or for registration as a sexual offender pursuant to s.  
 823 | 943.0435, may not be sealed, without regard to whether  
 824 | adjudication was withheld, if the defendant was found guilty of  
 825 | or pled guilty or nolo contendere to the offense, or if the  
 826 | defendant, as a minor, was found to have committed or pled  
 827 | guilty or nolo contendere to committing the offense as a  
 828 | delinquent act. The court may only order sealing of a criminal  
 829 | history record pertaining to one arrest or one incident of  
 830 | alleged criminal activity, except as provided in this section.  
 831 | The court may, at its sole discretion, order the sealing of a  
 832 | criminal history record pertaining to more than one arrest if

HB 645

2005  
CS

833 the additional arrests directly relate to the original arrest.  
 834 If the court intends to order the sealing of records pertaining  
 835 to such additional arrests, such intent must be specified in the  
 836 order. A criminal justice agency may not seal any record  
 837 pertaining to such additional arrests if the order to seal does  
 838 not articulate the intention of the court to seal records  
 839 pertaining to more than one arrest. This section does not  
 840 prevent the court from ordering the sealing of only a portion of  
 841 a criminal history record pertaining to one arrest or one  
 842 incident of alleged criminal activity. Notwithstanding any law  
 843 to the contrary, a criminal justice agency may comply with laws,  
 844 court orders, and official requests of other jurisdictions  
 845 relating to sealing, correction, or confidential handling of  
 846 criminal history records or information derived therefrom. This  
 847 section does not confer any right to the sealing of any criminal  
 848 history record, and any request for sealing a criminal history  
 849 record may be denied at the sole discretion of the court.

850 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each  
 851 petition to a court to seal a criminal history record is  
 852 complete only when accompanied by:

853 (a) A valid certificate of eligibility for sealing issued  
 854 by the department pursuant to subsection (2).

855 (b) The petitioner's sworn statement attesting that the  
 856 petitioner:

857 1. Has never, prior to the date on which the petition is  
 858 filed, been adjudicated guilty of a criminal offense or  
 859 comparable ordinance violation, or been adjudicated delinquent

HB 645

2005  
CS

860 for committing any ~~a~~ felony or a misdemeanor specified in s.  
861 943.051(3)(b).

862 2. Has not been adjudicated guilty of or adjudicated  
863 delinquent for committing any of the acts stemming from the  
864 arrest or alleged criminal activity to which the petition to  
865 seal pertains.

866 3. Has never secured a prior sealing or expunction of a  
867 criminal history record under this section, former s. 893.14,  
868 former s. 901.33, former s. 943.058, or from any jurisdiction  
869 outside the state.

870 4. Is eligible for such a sealing to the best of his or  
871 her knowledge or belief and does not have any other petition to  
872 seal or any petition to expunge pending before any court.

873  
874 Any person who knowingly provides false information on such  
875 sworn statement to the court commits a felony of the third  
876 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
877 775.084.

878 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
879 petitioning the court to seal a criminal history record, a  
880 person seeking to seal a criminal history record shall apply to  
881 the department for a certificate of eligibility for sealing. The  
882 department shall, by rule adopted pursuant to chapter 120,  
883 establish procedures pertaining to the application for and  
884 issuance of certificates of eligibility for sealing. A  
885 certificate of eligibility for sealing is valid for 12 months  
886 after the date stamped on the certificate when issued by the  
887 department. After that time, the petitioner must reapply to the



888 department for a new certificate of eligibility. Eligibility for  
 889 a renewed certification of eligibility must be based on the  
 890 status of the applicant and the law in effect at the time of the  
 891 most recent application. The department shall issue a

892 certificate of eligibility for sealing to a person who is the  
 893 subject of a criminal history record provided that such person:

894 (a) Has submitted to the department a certified copy of  
 895 the disposition of the charge to which the petition to seal  
 896 pertains.

897 (b) Remits a \$75 processing fee to the department for  
 898 placement in the Department of Law Enforcement Operating Trust  
 899 Fund, unless such fee is waived by the executive director.

900 (c) Has never, prior to the date on which the application  
 901 for a certificate of eligibility is filed, been adjudicated  
 902 guilty of a criminal offense or comparable ordinance violation,  
 903 or been adjudicated delinquent for committing any a felony or a  
 904 misdemeanor specified in s. 943.051(3)(b).

905 (d) Has not been adjudicated guilty of or adjudicated  
 906 delinquent for committing any of the acts stemming from the  
 907 arrest or alleged criminal activity to which the petition to  
 908 seal pertains.

909 (e) Has never secured a prior sealing or expunction of a  
 910 criminal history record under this section, former s. 893.14,  
 911 former s. 901.33, or former s. 943.058.

912 (f) Is no longer under court supervision applicable to the  
 913 disposition of the arrest or alleged criminal activity to which  
 914 the petition to seal pertains.

915 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

916 (a) In judicial proceedings under this section, a copy of  
 917 the completed petition to seal shall be served upon the  
 918 appropriate state attorney or the statewide prosecutor and upon  
 919 the arresting agency; however, it is not necessary to make any  
 920 agency other than the state a party. The appropriate state  
 921 attorney or the statewide prosecutor and the arresting agency  
 922 may respond to the court regarding the completed petition to  
 923 seal.

924 (b) If relief is granted by the court, the clerk of the  
 925 court shall certify copies of the order to the appropriate state  
 926 attorney or the statewide prosecutor and to the arresting  
 927 agency. The arresting agency is responsible for forwarding the  
 928 order to any other agency to which the arresting agency  
 929 disseminated the criminal history record information to which  
 930 the order pertains. The department shall forward the order to  
 931 seal to the Federal Bureau of Investigation. The clerk of the  
 932 court shall certify a copy of the order to any other agency  
 933 which the records of the court reflect has received the criminal  
 934 history record from the court.

935 (c) For an order to seal entered by a court prior to July  
 936 1, 1992, the department shall notify the appropriate state  
 937 attorney or statewide prosecutor of any order to seal which is  
 938 contrary to law because the person who is the subject of the  
 939 record has previously been convicted of a crime or comparable  
 940 ordinance violation or has had a prior criminal history record  
 941 sealed or expunged. Upon receipt of such notice, the appropriate  
 942 state attorney or statewide prosecutor shall take action, within  
 943 60 days, to correct the record and petition the court to void

HB 645

2005  
CS

944 the order to seal. The department shall seal the record until  
945 such time as the order is voided by the court.

946 (d) On or after July 1, 1992, the department or any other  
947 criminal justice agency is not required to act on an order to  
948 seal entered by a court when such order does not comply with the  
949 requirements of this section. Upon receipt of such an order, the  
950 department must notify the issuing court, the appropriate state  
951 attorney or statewide prosecutor, the petitioner or the  
952 petitioner's attorney, and the arresting agency of the reason  
953 for noncompliance. The appropriate state attorney or statewide  
954 prosecutor shall take action within 60 days to correct the  
955 record and petition the court to void the order. No cause of  
956 action, including contempt of court, shall arise against any  
957 criminal justice agency for failure to comply with an order to  
958 seal when the petitioner for such order failed to obtain the  
959 certificate of eligibility as required by this section or when  
960 such order does not comply with the requirements of this  
961 section.

962 (e) An order sealing a criminal history record pursuant to  
963 this section does not require that such record be surrendered to  
964 the court, and such record shall continue to be maintained by  
965 the department and other criminal justice agencies.

966 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
967 history record of a minor or an adult which is ordered sealed by  
968 a court of competent jurisdiction pursuant to this section is  
969 confidential and exempt from the provisions of s. 119.07(1) and  
970 s. 24(a), Art. I of the State Constitution and is available only  
971 to the person who is the subject of the record, to the subject's

HB 645

2005  
CS

972 attorney, to criminal justice agencies for their respective  
 973 criminal justice purposes, which include conducting a criminal  
 974 history background check for approval of firearms purchases or  
 975 transfers as authorized by state or federal law, or to those  
 976 entities set forth in subparagraphs (a)1., 4., 5., ~~and 6., and~~  
 977 8. for their respective licensing, access authorization, and  
 978 employment purposes.

979 (a) The subject of a criminal history record sealed under  
 980 this section or under other provisions of law, including former  
 981 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 982 deny or fail to acknowledge the arrests covered by the sealed  
 983 record, except when the subject of the record:

- 984 1. Is a candidate for employment with a criminal justice  
 985 agency;
- 986 2. Is a defendant in a criminal prosecution;
- 987 3. Concurrently or subsequently petitions for relief under  
 988 this section or s. 943.0585;
- 989 4. Is a candidate for admission to The Florida Bar;
- 990 5. Is seeking to be employed or licensed by or to contract  
 991 with the Department of Children and Family Services or the  
 992 Department of Juvenile Justice or to be employed or used by such  
 993 contractor or licensee in a sensitive position having direct  
 994 contact with children, the developmentally disabled, the aged,  
 995 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
 996 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 997 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and  
 998 (13), s. 985.407, or chapter 400; ~~or~~

HB 645

2005  
CS

999 |           6. Is seeking to be employed or licensed by the Department  
1000 | of Education, any district school board, any university  
1001 | laboratory school, any charter school, any private or parochial  
1002 | school, or any local governmental entity that licenses child  
1003 | care facilities;—

1004 |           7. Is attempting to purchase a firearm from a licensed  
1005 | importer, licensed manufacturer, or licensed dealer and is  
1006 | subject to a criminal history background check under state or  
1007 | federal law; or

1008 |           8. Is seeking authorization from a Florida seaport  
1009 | identified in s. 311.09 for employment within or access to one  
1010 | or more of such seaports pursuant to s. 311.12 or s. 311.125.

1011 |           (b) Subject to the exceptions in paragraph (a), a person  
1012 | who has been granted a sealing under this section, former s.  
1013 | 893.14, former s. 901.33, or former s. 943.058 may not be held  
1014 | under any provision of law of this state to commit perjury or to  
1015 | be otherwise liable for giving a false statement by reason of  
1016 | such person's failure to recite or acknowledge a sealed criminal  
1017 | history record.

1018 |           (c) Information relating to the existence of a sealed  
1019 | criminal record provided in accordance with the provisions of  
1020 | paragraph (a) is confidential and exempt from the provisions of  
1021 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
1022 | except that the department shall disclose the sealed criminal  
1023 | history record to the entities set forth in subparagraphs (a)1.,  
1024 | 4., 5., ~~and 6.~~, and 8. for their respective licensing, access  
1025 | authorization, and employment purposes. It is unlawful for any  
1026 | employee of an entity set forth in subparagraph (a)1.,

HB 645

2005  
CS

1027 | subparagraph (a)4., subparagraph (a)5., ~~or~~ subparagraph (a)6.,  
 1028 | or subparagraph (a)8. to disclose information relating to the  
 1029 | existence of a sealed criminal history record of a person  
 1030 | seeking employment, access authorization, or licensure with such  
 1031 | entity or contractor, except to the person to whom the criminal  
 1032 | history record relates or to persons having direct  
 1033 | responsibility for employment, access authorization, or  
 1034 | licensure decisions. Any person who violates the provisions of  
 1035 | this paragraph commits a misdemeanor of the first degree,  
 1036 | punishable as provided in s. 775.082 or s. 775.083.

1037 | (5) STATUTORY REFERENCES.--Any reference to any other  
 1038 | chapter, section, or subdivision of the Florida Statutes in this  
 1039 | section constitutes a general reference under the doctrine of  
 1040 | incorporation by reference.

1041 | Section 12. Subsection (5) of section 943.13, Florida  
 1042 | Statutes, is amended to read:

1043 | 943.13 Officers' minimum qualifications for employment or  
 1044 | appointment.--On or after October 1, 1984, any person employed  
 1045 | or appointed as a full-time, part-time, or auxiliary law  
 1046 | enforcement officer or correctional officer; on or after October  
 1047 | 1, 1986, any person employed as a full-time, part-time, or  
 1048 | auxiliary correctional probation officer; and on or after  
 1049 | October 1, 1986, any person employed as a full-time, part-time,  
 1050 | or auxiliary correctional officer by a private entity under  
 1051 | contract to the Department of Corrections, to a county  
 1052 | commission, or to the Department of Management Services shall:

1053 | (5) Have documentation of his or her processed  
 1054 | fingerprints on file with the employing agency or, if a private

HB 645

2005  
CS

1055 | correctional officer, have documentation of his or her processed  
 1056 | fingerprints on file with the Department of Corrections or the  
 1057 | Criminal Justice Standards and Training Commission. If  
 1058 | administrative delays are caused by the department or the  
 1059 | Federal Bureau of Investigation and the person has complied with  
 1060 | subsections (1)-(4) and (6)-(9), he or she may be employed or  
 1061 | appointed for a period not to exceed 1 calendar year from the  
 1062 | date he or she was employed or appointed or until return of the  
 1063 | processed fingerprints documenting noncompliance with  
 1064 | subsections (1)-(4) or subsection (7), whichever occurs first.  
 1065 | Beginning December 15, 2005, the department shall retain and  
 1066 | enter into the statewide automated fingerprint identification  
 1067 | system authorized by s. 943.05 all fingerprints submitted to the  
 1068 | department as required by this section. Thereafter, the  
 1069 | fingerprints shall be available for all purposes and uses  
 1070 | authorized for arrest fingerprint cards entered in the statewide  
 1071 | automated fingerprint identification system pursuant to s.  
 1072 | 943.051. The department shall search all arrest fingerprint  
 1073 | cards received pursuant to s. 943.051 against the fingerprints  
 1074 | retained in the statewide automated fingerprint identification  
 1075 | system pursuant to this section and report to the employing  
 1076 | agency any arrest records that are identified with the retained  
 1077 | employee's fingerprints. By January 1, 2007, a person who must  
 1078 | meet minimum qualifications as provided in this section and  
 1079 | whose fingerprints are not retained by the department pursuant  
 1080 | to this section must be refingerprinted. These fingerprints must  
 1081 | be forwarded to the department for processing and retention.

HB 645

2005  
CS

1082 Section 13. Section 943.1715, Florida Statutes, is amended  
1083 to read:

1084 943.1715 Basic skills training relating to diverse  
1085 populations.--The commission shall establish and maintain  
1086 standards for instruction of officers in the subject of  
1087 interpersonal skills relating to diverse populations, with an  
1088 emphasis on the awareness of cultural differences. Every basic  
1089 skills course required in order for officers to obtain initial  
1090 certification must include ~~a minimum of 8 hours~~ training in  
1091 interpersonal skills with diverse populations.

1092 Section 14. Section 943.1716, Florida Statutes, is amended  
1093 to read:

1094 943.1716 Continued employment training relating to diverse  
1095 populations.--The commission shall by rule require that each  
1096 officer receive, as part of the 40 hours of required instruction  
1097 for continued employment or appointment as an officer, ~~8 hours~~  
1098 of instruction in the subject of interpersonal skills relating  
1099 to diverse populations, with an emphasis on the awareness of  
1100 cultural differences.

1101 Section 15. Section 943.2569, Florida Statutes, is  
1102 repealed.

1103 Section 16. Section 943.257, Florida Statutes, is amended  
1104 to read:

1105 943.257 Independent audit documentation subject to  
1106 inspection.--The Criminal Justice Standards and Training  
1107 Commission or a center's advisory board may inspect and copy any  
1108 documents from the center as required to carry out the  
1109 commission's or the respective board's oversight



HB 645

2005  
CS

1110 | responsibilities, including information and documents related to  
 1111 | applicant evaluations and center expenditures. In addition, the  
 1112 | commission or board may inspect and copy the documentation of  
 1113 | any internal or independent audits conducted by or on behalf of  
 1114 | the centers to ensure that candidate and inservice officer  
 1115 | assessments have been made and that expenditures are in  
 1116 | conformance with the requirements of this act and with other  
 1117 | applicable procedures.

1118 | Section 17. Subsections (1) and (3) of section 943.401,  
 1119 | Florida Statutes, are amended to read:

1120 | 943.401 Public assistance fraud.--

1121 | (1)(a) The Department of Law Enforcement shall investigate  
 1122 | all public assistance provided to residents of the state or  
 1123 | provided to others by the state ~~made under the provisions of~~  
 1124 | ~~chapter 409 or chapter 414.~~ In the course of such investigation  
 1125 | the Department of Law Enforcement shall examine all records,  
 1126 | including electronic benefits transfer records and make inquiry  
 1127 | of all persons who may have knowledge as to any irregularity  
 1128 | incidental to the disbursement of public moneys, food stamps, or  
 1129 | other items or benefits authorizations to recipients.

1130 | (b) All public assistance recipients, as a condition  
 1131 | precedent to qualification for public assistance ~~under the~~  
 1132 | ~~provisions of chapter 409 or chapter 414,~~ shall first give in  
 1133 | writing, to the Agency for Health Care Administration, the  
 1134 | Department of Health, the Agency for Workforce Innovation, and  
 1135 | the Department of Children and Family Services, as appropriate,  
 1136 | and to the Department of Law Enforcement, consent to make

HB 645

2005  
CS

1137 inquiry of past or present employers and records, financial or  
1138 otherwise.

1139 (3) The results of such investigation shall be reported by  
1140 the Department of Law Enforcement to the appropriate legislative  
1141 committees, the Agency for Health Care Administration, the  
1142 Department of Health, the Agency for Workforce Innovation, and  
1143 the Department of Children and Family Services, and to such  
1144 others as the Department of Law Enforcement may determine.

1145 Section 18. Authority to purchase goodwill and promotional  
1146 materials.--

1147 (1) The Legislature recognizes that the department  
1148 functions as one of the state's primary law enforcement  
1149 representatives in national and international meetings,  
1150 conferences, and cooperative efforts. The department often hosts  
1151 delegates from other federal, state, local, and international  
1152 agencies and is in a position to function as a representative of  
1153 the state fostering goodwill and effective interagency working  
1154 relationships. It is the intent of the Legislature that the  
1155 department be allowed, consistent with the dignity and integrity  
1156 of the state, to purchase and distribute material and items of  
1157 collection to those with whom the department has contact in  
1158 meetings, conferences, and cooperative efforts.

1159 (2) In addition to expenditures separately authorized by  
1160 law, the department may expend not more than \$5,000 annually to  
1161 purchase and distribute promotional materials or items that  
1162 serve to advance with dignity and integrity the goodwill of this  
1163 state and the department and to provide basic refreshments at  
1164 official functions, seminars, or meetings of the department in

HB 645

2005  
CS

1165 which dignitaries or representatives from the Federal  
 1166 Government, other states or nationalities, or other agencies are  
 1167 in attendance.

1168 Section 19. Unauthorized use of Department of Law  
 1169 Enforcement emblems or names prohibited.--

1170 (1) Whoever, except with the written permission of the  
 1171 executive director of the department or as otherwise expressly  
 1172 authorized by the department, knowingly uses the words "Florida  
 1173 Department of Law Enforcement," the initials "F.D.L.E." or  
 1174 "FDLE," or the words "Florida Capitol Police," or any colorable  
 1175 imitation of such words or initials, or who uses a logo or  
 1176 emblem used by the department in connection with any  
 1177 advertisement, circular, book, pamphlet, or other publication,  
 1178 play, motion picture, broadcast, telecast, or other production,  
 1179 in any Internet web page or upon any product in a manner  
 1180 reasonably calculated to convey the impression that such  
 1181 advertisement, circular, book, pamphlet, or other publication,  
 1182 play, motion picture, broadcast, telecast, or other production,  
 1183 Internet web page, or product is approved, endorsed, or  
 1184 authorized by the Department of Law Enforcement commits a  
 1185 misdemeanor of the first degree, punishable as provided in s.  
 1186 775.082 or s. 775.083, Florida Statutes.

1187 (2) A violation of this section may be enjoined upon suit  
 1188 by the department or the Department of Legal Affairs upon  
 1189 complaint filed in any court of competent jurisdiction.

1190 Section 20. Except as otherwise provided herein, this act  
 1191 shall take effect July 1, 2005.